

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-41175
Conference Calendar

CURTIS R. FRANCIS,

Plaintiff-Appellant,

versus

GARY L. JOHNSON ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:96-CV-819
- - - - -

October 21, 1997

Before POLITZ, Chief Judge, and WIENER and DENNIS, Circuit Judges.

PER CURIAM:*

Curtis R. Francis, Texas prisoner #564414, appeals the denial of his motion for a preliminary injunction. His argument is moot in light of the magistrate judge's dismissal of his suit, because a "[p]reliminary injunction cannot survive dismissal of a complaint." 11A Charles Alan Wright Et Al., Federal Practice & Procedure § 2947 at 126 n.19 (2d ed. 1995)(citing Venezia v. Robinson, 16 F.3d 209, 211 (7th Cir. 1994).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Francis's appeal is without arguable merit and thus frivolous. See Howard v. King, 707 F.2d. 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2. Francis now "has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted[.]" 28 U.S.C. § 1915(g). Accordingly, Francis is barred from proceeding in forma pauperis in a civil action unless he is under imminent danger of serious physical injury. See id.

APPEAL DISMISSED; SANCTION IMPOSED.